

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--------------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Tribal Mobility Fund Phase I Auction |) | AU Docket No. 13-53 |
| Competitive Bidding Procedures |) | |

To: Wireless Telecommunications and Wireline Competition Bureaus

**REPLY COMMENTS OF NATIVE PUBLIC MEDIA AND
NATIONAL CONGRESS OF AMERICAN INDIANS**

The National Congress of American Indians (“NCAI”) and Native Public Media (“NPM”) respectfully submit these reply comments in response to the Public Notice issued in the Tribal Mobility Fund Phase I Auction 902.¹ These comments are limited to one flaw: the Commission has failed to identify many areas that should be eligible for bidding in Auction 902.² These are areas of tribal lands where 3G or better service is *not* available, and not promised by existing carriers.

At least nine (9) tribes or tribal organizations filed comments expressing concern that the Commission had significantly overstated where 3G or better service is available in determining eligible areas.³ Other non-tribal carriers wishing to provide service to Indian Country raised the

¹ See *Public Notice*, DA-13-323, March 29, 2013 (“*Public Notice*”).

² See <http://wireless.fcc.gov/auctions/902/>.

³ See, Comments of Leech Lake Ogibwe, pp. 2-3; Comments of Warm Springs, p. 5; Comments of Rosebud Sioux Tribe, pp. 2-4; Comments of Oglala Sioux Tribe, p. 2-3; Comments of the Navajo Nation Telecommunications Regulatory Commission (NNTRC), pp. 4-6; Bad River Band of Lake Superior Chippewa, pp. 7-8; Comments of the Affiliated Tribes of Northwest Indians, p. 2; Comments of NTTA, pp. 6-7; Comments of Pa Makani LLC (Sandwich Island Wireless), pp. 6-7.

same concerns.⁴ Tribes know their lands best and their first hand experience of where service is, or is not, available should be given greater weight. They know where they can and cannot make a reliable call and what stretches of reservation roads have real access to service.

The experience of tribes and tribal organizations offer a striking contrast to the comments of AT&T, which wishes to exclude another 31 census blocks from nine (9) separate tribal lands.⁵ AT&T's proposal is based not on testing or actual experience on tribal lands, but on its own theoretical models that predict where service *should be* available. To support its conclusions, AT&T did not actually perform tests on any tribal lands.⁶ "Well, you should be able get service there," is a refrain tribal nations and their citizens have heard time and time again. It should come as little surprise, then, that the Navajo word for cellphone is Bił Nijoobałi, "one who spins around," referring to the necessary activity to try and access a usable signal.

NCAI and NPM, along with others, have consistently argued that the Mosaik data used by the FCC to establish eligible areas for a number of purposes, including Auctions 901 and 902, are simply wrong.⁷ Whether the errors arise because the theoretical models underlying the Mosaik database fail to take into account the ruggedness of many tribal lands, or because carriers overstate their actual service for competitive advantage, this method should not provide the ultimate determination for tribal land eligibility in Auction 902. The point is that the FCC

⁴ See, Comments of Smith Bagley, Inc., pp. 2-5 (as to portions of the Navajo Nation); Comments of Alaska Rural Coalition, pp. 8-10.

⁵ See Comments of AT&T. The Tribes who would be impacted if these 31 census blocks are removed from Auction 902 are: Ketchikan (AK); Tanacross (AK); Cold Springs (CA); Four Winds Cherokee (LA); Bay Mills (MI); Cayuga Nation (NY); Fort Berthold (ND); Siletz (OR); Samish (WA).

⁶ Compare AT&T's theoretical showing with that of Smith Bagley, which actually conducted a thorough drive test in the Eastern Agency section of the Navajo Nation to demonstrate that 3G service is not available in over 85% of the census blocks which were deemed *not* eligible for Auction 902 based on the Mosaik data.

⁷ See, e.g., Joint Comments of NCAI/NPM in Docket 10-208 (filed 12/10/10); Joint Reply Comments of NCAI/NPM in Docket 11-40 (filed 6/20/11); Joint Reply Comments of NCAI/NPM in Docket 11-41

cannot and **should not** rely on the Mosaik data alone in determining eligible areas for Auction 902. If this means that Auction 902 needs to be delayed for a short period of time while the FCC corrects these errors, then such a delay should be implemented in the best interests of tribal participation. The \$50 million available for the Tribal Mobility Fund Phase I is a one-time opportunity. The FCC **must** get this right.⁸

Placing the burden on tribes to disprove the predictions of the carriers' theoretical models is patently unfair.⁹ These multi-million (or in the case of AT&T, multi-billion) dollar¹⁰ enterprises can rely on theoretical models they created, which tribes with limited resources are somehow expected to refute. This fundamental unfairness is reminiscent of the benign neglect of tribes during the first 65 years of the Communications Act and it does not reflect the government-to-government relationship and commitment to consultation, which has evolved over the past decade at the FCC.

Getting the facts right is essential to any reverse auction. The FCC should dedicate the resources necessary to establish accurate maps of 3G level service on tribal lands.¹¹ Anything less is an abrogation of the FCC's responsibilities under its trust relationship with tribes.

(filed 8/4/11).

⁸ If for some reason the FCC decides that it must proceed with Auction 902 in October, 2013, without revamping the eligible areas, NCAI and NPM implore the FCC to undertake a review of Tribal eligible areas as soon as possible so that these same problems do not poison the Tribal Mobility Fund Phase II for years to come.

⁹ See *Tribal Mobility Fund Public Notice*, ¶ 21.

¹⁰ AT&T's consolidated first quarter revenues for 2013 were over \$31 billion. See AT&T Form 8-k, filed with the SEC on April 23, 2013.

¹¹ As NCAI and NPM stated in its Comments in this proceeding, the other highest priority for the FCC in its relationship with Tribes should be to further its work in Docket 11-40 to adopt rules which make spectrum available to Tribes and Tribal carriers, including strict build-or-divest provisions to take spectrum away from carriers who have no real intention of providing service into Indian Country, but who instead are warehousing that spectrum.

NATIVE PUBLIC MEDIA

By: _____/s/
Loris Ann Taylor
President & CEO
P.O. Box 3955
Flagstaff, AZ 86003

By: _____/s/
John Crigler
James E. Dunstan
GARVEY SCHUBERT BARER
1000 Potomac St., N.W. Suite 500
Washington, DC 20007
Counsel to Native Public Media

Dated: May 24, 2013

Respectfully submitted,

**NATIONAL CONGRESS OF
AMERICAN INDIANS**

By: _____/s/
Jacqueline Johnson Pata
Executive Director
1516 P Street, NW
Washington, DC 20005